

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

RESOLUTION 93 - 017

RECOMMENDATION FOR WATER QUALITY CERTIFICATION  
FOR  
WASTE MANAGEMENT OF CALIFORNIA, INCORPORATED  
KIRBY CANYON RECYCLING AND DISPOSAL FACILITY  
WETLAND FILL  
SANTA CLARA COUNTY

WHEREAS, Waste Management of California, Inc. (WMI) has applied to the State for Water Quality Certification under Section 401 of the Federal Clean Water Act for the filling of 3.62 acres of wetlands which have been delineated as such under Section 404 of the Federal Clean Water Act; and

WHEREAS, these wetlands will be filled in the course of continued operation of the Kirby Canyon Recycling and Disposal Facility, San Jose, Santa Clara County, and are waters of the State and of the United States; and

WHEREAS, the Regional Board under Section 401 of the Clean Water Act reviews applications to determine if the proposed activity will meet State water quality objectives for Water Quality Certification for the proposed activity; and

WHEREAS, Water Quality Certification is a certification for an activity that requires a federal license or permit that there is reasonable assurance that the activity which may result in discharge to waters of the United States will not violate water quality objectives (Title 23, California Code of Regulations, Section 3830 et. seq.); and

WHEREAS, WMI submitted an application for water quality certification on September 15, 1992, which, after further submittals, was found complete by the Regional Board's Executive Officer on December 21, 1992; and

WHEREAS, the California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR or Negative Declaration) for such projects; and

WHEREAS, A Final Environmental Impact Report for this project was certified by the City of San Jose in December 1983, a Planned Development Conditional Use Permit and Solid Waste Operating Permit was issued by the City of San Jose in

August 1984, and the San Francisco Regional Water Quality Control Board issued Waste Discharge Requirements for the landfill on May 15, 1985; and

WHEREAS, the 3.62 acres of seeps, springs, and seasonal watercourses proposed to be filled contain areas composed of hydric soils that are periodically inundated with surface and groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and is therefore defined as a wetland according to 40 CFR 122.2; and

WHEREAS, these areas covered by wetland and riparian vegetation provide valuable habitat for resident and migratory birds of a wide variety of species as well as provide wildlife habitat; and

WHEREAS, the Regional Board, in Resolution No. 87-106, dated August 19, 1987, adopted, in accordance with Section 13244 et. seq. of the California Water Code, amendments to the Water Quality Control Plan, San Francisco Bay Basin (Basin Plan) that established a policy for regulating wetland fill; and

WHEREAS, the Basin Plan Wetland Fill Policy establishes that there be no net loss of wetland acreage and no net loss of wetland habitat value when the project and the proposed mitigation are evaluated together and that mitigation for wetland fill projects be located in the same area of the Region, wherever possible, as the project; and

WHEREAS, WMI has submitted an alternatives analysis that addresses the requirements of Section 404(b)(1) of the Clean Water Act and the Regional Board has utilized this alternatives analysis in their consideration of the case; and

WHEREAS, Section 13142.5 of the California Water Code requires that the "highest priority shall be given to improving or eliminating discharges that adversely affect ... Wetlands, estuaries, and other biologically sensitive areas"; and

WHEREAS, Senate Concurrent Resolution No. 28 states that, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for the benefit of the people of the State."; and

WHEREAS, the discharge of fill material into the wetlands of the project site will cause a condition of pollution to exist in these waters of the State by altering the quality and quantity of water in the area, that is needed to support wetland beneficial uses, to a degree that will eliminate the beneficial uses of these waters of the State; and

WHEREAS, WMI has proposed mitigation measures, as part of the application for Water Quality Certification and the Kirby Canyon Recycling and Disposal Facility Wetland/Waters Mitigation Plan, to offset the loss of beneficial uses of waters of the State, resulting from the discharge of fill material into the wetlands of the State at the project site; and

WHEREAS, the proposed mitigation involves the creation of 6.20 acres of enhanced and in-kind compensating wetlands and 1.10 acres of other waters of the United States and planting of 3.7 acres of riparian and upland shrubs, trees and grasses surrounding the wetland areas; and

WHEREAS, the proposed wetlands are considered in-kind habitat replacement for the wetlands that will be lost due to the project on a greater than acre for acre basis; and

WHEREAS, the proposed mitigation plan will ensure that this project will not result in a net loss of wetland values or acreage and is therefore in compliance with the Basin Plan; now

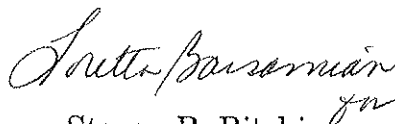
BE IT THEREFORE RESOLVED, that this Regional Board recommends that the Executive Director of the State Water Resources Control Board grant Water Quality Certification pursuant to Section 401 of the Clean Water Act and State regulations in Title 23 California Code of Regulations Section 3830 et. seq., for Waste Management of California, Incorporated, Kirby Canyon Recycling and Disposal Facility, with the provisions that:

1. No work shall begin prior to completion of Section 7 (Endangered Species Act) consultations with the U.S. Department of Fish and Wildlife and all conditions required by Section 7 guidelines be followed.
2. By April 1, 1993, WMI shall give written assurance to the Executive Officer of the Regional Board that WMI shall be financially responsible for (1) completion of all mitigation to design specifications; (2) long-term maintenance of the mitigation and creek restoration; and (3) adjusting mitigation plans or implementing contingency measures to ensure that the mitigation shall reach success criteria. At all stages of the mitigation, success of the mitigation shall be determined by, and to the satisfaction of, the Department of Fish and Game and the Executive Officer of the Regional Board.
3. A Streambed Alteration Agreement, or more than one Agreement if required, shall be obtained from the Department of Fish and Game covering all work to be performed in or near the creeks. Any conditions that are part of the streambed alteration agreement shall become part of this certification.

4. The applicant shall complete all mitigations as described in the "Kirby Canyon Recycling and Disposal Facility, Wetlands/Waters Mitigation Plan", dated September 14, 1992.
5. Mitigation areas shall be preserved in perpetuity either by dedication to an appropriate public agency or by establishment of a conservation easement for these areas. Documentation of arrangements shall be sent to this office within 180 days of issuance of the water quality certification.

BE IT FURTHER RESOLVED, that this Regional Board directs the Executive Officer to transmit this resolution to the Executive Director of the State Water Resources Control Board.

I, Steven R. Ritchie, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on February 17, 1993.

A handwritten signature in cursive script, appearing to read "Steven R. Ritchie".

Steven R. Ritchie  
Executive Officer